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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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20 DANYELL MURPHY and CANDI PERRY,
individually and on behalf of all others
21 similarly situated,

22 Plaintiff,

23 vs.

24 TARGET CORPORATION

25 Defendant.

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CASE NO. 09 CV 1436 AJB (WMc)

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE SECTION 2698 ET SEQ.)**

1 Plaintiffs Danyell Murphy and Candi Perry, individually and on behalf of all others
2 similarly situated, allege as follows:

3 INTRODUCTION

4 1. This is a class action and a representative action for recovery of penalties under the
5 California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code section
6 2698 et seq. PAGA permits an "aggrieved employee" to bring a lawsuit on behalf of himself or
7 herself and other current and former employees to address an employer's violations of the
8 California Labor Code. In this case, defendants violated California Labor Code section 1198 and
9 Wage Order 7-2001, section 14 by failing to provide suitable seats to plaintiffs and other current
10 and former employees. Plaintiffs seek penalties on behalf of themselves and other current and
11 former employees of defendant as provided herein.

12 2. Plaintiffs Danyell Murphy and Candi Perry are individuals residing in the State of
13 California.

14 3. Defendant Target Corporation is a Minnesota corporation doing business in San
15 Diego, California.

16 4. Venue is proper in this judicial district because at least some of the alleged
17 wrongdoing occurred in this judicial district.

18 5. For at least a part of the applicable limitations period, plaintiffs were employed as
19 Cashiers in Target stores located in the State of California. In connection with their jobs as
20 Cashiers, plaintiffs regularly operated a cash register.

21 6. Wage Order 7-2001, which covers businesses in the "mercantile industry" such as
22 Target, states: "All working employees shall be provided with suitable seats when the nature of
23 the work reasonably permits the use of seats." Id., section. 14(a). Target failed to provide its
24 Cashiers, including plaintiffs, with seats, despite the fact that the nature of Cashier work
25 reasonably permits the use of seats.

26 CLASS ALLEGATIONS

27 7. Class Definition: Plaintiffs bring this lawsuit on their own behalf and as a class
28 action under Fed. R. Civ. P. 23. The class ("Class") that plaintiffs seek to represent is defined as

FIRST CAUSE OF ACTION
(Violation of PAGA)

14. Plaintiffs incorporate by reference the allegations set forth above.

15. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. By failing to provide plaintiffs and the other Class members with seats, in violation of Wage Order 7-2001, section 14, Target violated Lab. Code section 1198.

16. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself or herself and other current or former employees as a result of the employer's violations of certain sections of the California Labor Code. Plaintiffs are aggrieved employees, in that plaintiffs were employed by Target and, for at least a part of their employment during the limitations period, were not provided with seats, in violation of Lab. Code section 1198 and Wage Order 7-2001, section 14. A violation of Lab. Code section 1198 gives rise to private right of action under PAGA.

17. Plaintiffs have complied with the PAGA notice provision set forth in Cal. Lab. Code section 2699.3(a)(1). The Labor and Workforce Development Agency has not provided plaintiffs with notice that it intends to investigate this violation, although 33 calendar days have elapsed since the postmark date of the notice. Accordingly, plaintiffs are entitled to commence this action.

18. Plaintiffs request penalties against Target as provided under Lab. Code section 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

PRAYER

WHEREFORE, plaintiffs request entry of judgment, on behalf of themselves and the other Class members, against defendant as follows:

1. For penalties according to proof;
2. For reasonable attorneys' fees and costs of suit; and
3. For such other relief that the Court deems proper.

1 follows: "All persons who, during the applicable statute of limitations, were employed by Target
2 in the State of California in the position of Cashier and, for at least part of their employment
3 during the limitations period, were not provided with a seat."

4 8. Ascertainable Class: The Class is ascertainable in that its members may be
5 identified and located using information contained in Target's personnel records.

6 9. Numerosity: The Class is so numerous that the individual joinder of all members is
7 impractical under the circumstances of this case. The Class consists of well over 1,000
8 individuals.

9 10. Common Questions of Fact or Law: This lawsuit is suitable for class treatment
10 because common questions of fact and law predominate over individual issues. Common
11 questions include, but are not limited to, the following: (1) whether Target is subject to the
12 requirements of Wage Order 7-2001, section 14; (2) whether the job of a Cashier at Target
13 reasonably permits the use of a seat; (3) what type(s) of seat would be suitable; and (4) the amount
14 of penalties that should be awarded under PAGA.


15 11. Typicality: Plaintiffs' claims are typical of the claims of Class members.
16 Plaintiffs and the Class members were injured by Target's common practice of failing to provide
17 seats.

18 12. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class.
19 Plaintiffs have no interests that are adverse to the interests of the Class.

20 13. Superiority: A class action is superior to other available means for the fair and
21 efficient adjudication of this controversy, since individual joinder of all members of the Class is
22 impractical. Class action treatment will permit a large number of similarly situated persons to
23 prosecute their common claims in a single forum simultaneously, efficiently, and without
24 unnecessary duplication of effort and expense. Furthermore, the expenses and burden of
25 individualized litigation would make it difficult or impossible for individual members of the Class
26 to redress the wrongs done to them, while an important public interest will be served by
27 addressing the matter as a class action. Individualized litigation would also present the potential
28 for inconsistent or contradictory judgments.

1 Dated: February 2, 2011

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FIRST AMENDED CLASS ACTION COMPLAINT